Supreme Court, U.S.
FILED

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No.

In The

SUPREME COURT OF THE UNITED STATES

CHARLES R. CONNOR,
Petitioner

v.

WILLIAM HENDERSON, POSTMASTER GENERAL
UNITED STATES POSTAL SERVICE
Respondent

On the Petition For Writ Of Certiorari
To The Fifth Circuit Court Of Appeals

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QUESTIONS PRESENTED FOR REVIEW

1. Whether a six-year interval between the completion of a Title VII case in a United States District Court and the rendering of the Final Decision by the Presiding Judge constitutes impermissible delay-thereby entitling Plaintiff to reversal or new trial.

2. Whether the Plaintiff-Petitioner was entitled to have his question answered as to what impact his filing of a Complaint of Judicial Misconduct or Disability against the presiding judge had upon the timing and manner in which the decision was rendered.

3. Whether the Plaintiff-Petitioner was entitled to an analysis and answer to the factual question of whether the requisite credibility of approximately twenty witnesses, including Plaintiff-Petitioner could be properly ascertained after a lapse of almost six-years from the dates of their testimony and the date the final decision was rendered.

4. Whether the fact that Agency Officials repeatedly took unwarranted and unduly harsh disciplinary actions against Plaintiff-Petitioner should have been given weight in determining whether discrimination had in fact occurred.

5. Whether the fact that Postal Service Officials violated Plaintiff's rights under the Privacy Act and numerous of his other civil and constitutional rights constitutes grounds for reversal or new trial.

6. Whether Postal Service Officials were required to obey its own Policies, Rules, Regulations and the Laws and Statutes of the United States.

7. Whether District Court committed reversible error when it failed to grant Plaintiff Injunctive Relief that was requested early on in this case.

8. Whether District Court committed clear, and therefore reversible error when it failed to exercise its Court of Equity powers to make awards to Plaintiff in numerous proven instances of wrongful treatment by Agency Officials.

9. Whether District Court committed reversible error when it failed to apply the Unclean Hands Doctrine in determining the credibility of the testimony of Agency Officials and its star witness-Dr. Skinner.

10. Whether District Court committed reversible error in allowing Postal Service Officials and its agents to suborn and commit perjury with impunity throughout the proceedings.

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OPINIONS BELOW

The OPINION of the United States Court of Appeals and its ORDER denying Petition For Rehearing are reproduced in the Appendix at App. 1 and App. 5 respectively.

The United States District Court's Findings Of Fact And Conclusions Of Law and its Final Judgement and Order are reproduced in the Appendix at App. 1 and App. 6 respectively.

JURISDICTION

This Petition For Writ Of Certiorari is submitted in accordance with Rule 10 of Part III of Rules of The Supreme Court Of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U. S. Constitution, Amendment IV. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated, and no warranties shall issue, but upon probable cause, supported by Oath or Affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The various Statutes applicable to the Petition are listed at page iv of this Petition.

STATEMENT OF THE CASE

The history of this case is long, convoluted and torturous. It was initially filed on March 13, 1985. Its genesis dates back to 1979 when Charlie R. Connor, then having served as a highly successful Level 16 Station Manager started applying for promotion to Level 18 Station Manager job vacancies at stations located in the Dallas Post Office Management Sectional Center. Each time for various alleged reasons he was not promoted. In October 1979 two Level 18 vacancies were posted. Connor submitted his application in accordance with the accompanying instructions and standard procedures.

Notwithstanding the fact that Connor was highly recommended by his immediate superior, and notwithstanding the fact that the Review Board, whose duty was to screen the applications, determined that he was highly qualified and referred him to the selecting officials, along with other applicants also considered to be qualified, he was not promoted to either of the level 18 jobs.

After being informed that he did not receive a promotion, Connor requested and was granted a meeting with Glen Smith and Charles Flagg the Officials who made the decisions as to who received the two promotions. During the meeting the only reason given Connor by Smith and Flagg as to why he was not promoted was that he did not know what his Station's MPDs (Minutes Per Delivery) were at the time.

Viewing Flagg's and Smith's explanation as being pretexual, Connor reminded them that all of their previous

promotees to level 18 positions had been Level 17 Superintendents of Station Operations and then Level 16 Station managers in order of length of time they had served in those positions. Connor also reminded them that he was the only exception to that clearly established and enunciated policy.

Having received no hope of redress during his meeting with Flagg and Smith, Connor shortly thereafter contacted the Office of Postal Service EEO Counselors. On April 3, 1980 Connor filed a formal discrimination complaint essentially charging the Dallas Post Office with discriminatory promotional practices against him in particular and Blacks generally as it related to Station Manager jobs.

A hearing on Connor's discrimination complaint was held before an EEOC Attorney-Examiner on May 21-22, 1982. The EEOC Attorney-Examiner ruled against Connor and the Postal Service issued its final decision on October 15, 1982. Connor made a timely appeal of that decision to the EEOC Board of Review and Appeals. That appeal was still pending before the EEOC Board when Connor filed his original Title VII Complaint No. 3-85-0517 in Federal District Court on March 13, 1985.

The record clearly shows that up until the time Connor filed his discrimination complaint, he had compiled an impeccable record during his twenty years of Postal Service employment. Nevertheless, shortly afterwards his status among his superiors and peer managers immediately started declining. Not long thereafter his longtime impeccable record was systematically tarnished and besmirched.

In order to correctly delineate this case it is necessary to point out that it followed a two-track course of litigation. One course was being adjudicated in U.S. District Court in response to Connor's Title VII case. The other course was being pursued in various administrative venues.

Listed below and in chronological order are the major pleadings submitted during the 14 years that Connor's initial Title VII Complaint was pending in District Court through the appeal to and issuance of the Final Judgment by the Fifth Circuit Court of Appeal on May 9, 2000. During the time Connor's case No.3:85-CV-517-T, (R.1-6)[1], was pending five amended complaints as well as a second civil action that was consolidated with the first one was filed

The Court entered the interlocutory orders dismissing certain claims and a final judgment on all remaining claims on April 28, 1999 after a bench trial that ended in May, 1993. R88, 224, 501, 845, 1322.

First, on May 13, 1985 Connor, along with two other plaintiffs, filed a first Amended Complaint-Class Action, alleging classwide racial discrimination against Black Supervisors by the Dallas Post Office. R7-16.

On March 31, 1987, the Court issued an Order granting summary judgment in part and granting leave to amend in part, in response to previous submitted pleadings. R-224-26.

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[1] (References to the thirteen-volume record on Appeal in Case No. 3:8-CV-517-are designated by "R" followed by the pertinent page number(s) (References to the one volume record of the second case (No. 3-90-3844-6 are designated ("2R").

Connor filed a Second Amended Complaint in May 1987 and a Third Amended Complaint in February 1988. R. 227-31, 248-53. In December 1988 Connor filed a Fourth Amended Complaint.

On December 18, 1990, Connor filed another case against the Postal Service. 2-R1. This action, Case No. 3-90-3844-G, sought the District Court's review of a decision of the Merit Systems Protection Board (MSPB), which upheld his June 1990 removal from the Postal Service.

Pursuant to Defendant's motion, on February 26, 1991, the District Court consolidated the second civil action with action No. 3-85-0517-T. R. 1085-89; 2-R.21. Connor's Fifth Amended Complaint was filed on December 23, 1991. R.1196-1204. The District Court conducted a trial of Connor's civil actions on April 19-23, and May 3, 1993.

In February and September 1997 Connor filed requests that a status conference be held to determine whether additional filings by the parties might aid he Court in rendering a decision. R.11314-17. In February 1998 Connor filed a Motion For Ruling, requesting that the Court render a ruling in the case. R.1318.

On March 27, 1999 Connor in accordance with the Rules Governing Complaints Of Judicial Misconduct Or Disability, filed a complaint against United States District Judge Robert Maloney with the Judicial Council of the Fifth Circuit of Appeals.

On April 28, 1999, one month after his complaint was mailed, Judge Maloney issued the Decision that had been pending in his court for almost six-years since the end of the trial.

In an Order dated May 14, 1999, the judicial council of

The Fifth Circuit Court concluded the Compliant against Judge Maloney was now moot since the decision had now been issued. On May 19, 1999 Connor filed a Petition For review of the Order concluding that his Complaint was moot. Connor's petition was premised on the contention that the timing and manner in which the Final Decision was issued made it apparent that the decision was used as an instrument of retaliation in response to Connor's complaint.

In an Order dated September 15, 1999 an Appellant Review Panel of the Judicial Council of the Fifth Circuit Affirmed the previous Order concluding the complaint against Judge Maloney.

In a letter dated June 25, 1999 Connor gave proper and timely notice of Appeal of the District Court Order to the Fifth Circuit Court.

On September 29, 1999 Connor's appeal brief was filed. On November 22, 1999 Appellee's brief was filed. On December 9, 1999 Appellant's reply brief was filed. On February 21, 2000 the Fifth Circuit Court issued its Opinion and Order affirming the judgment of the District Court.

On April 5, 2000 Connor filed a Petition For Rehearing. On May 9, 2000 Connor's Petition For Rehearing was denied.

ARGUMENT

The Petition For Writ Of Certiorari is based on ten questions presented this Court for review. However, the gravamen of this case-the root-cause from which those ten questions are derived is the six-year interval between the May 3, 1993 trial ending and the April 28, 1999 date that the District Court issued its Decision.

It is apparent that such unexplained delay was so at variance with the required standards of judicial conduct and competence as to constitute grounds for reversal. It just is not humanly possible that the same Court which could not render a decision promptly after the trial ended-while testimony and other trial evidence were fresh in mind-could render one so quickly following the filing of Connor's judicial misconduct complaint. It should especially be considered that during the six-year interval, Petitioner submitted three pleadings to the Court in an effort to elicit a Decision. Those pleadings were ignored, as were numerous inquiries by phone.

Had the District Court rendered its Decision in a reasonable period of time, then Petitioner's Complaint of Judicial Misconduct or Disability would not have been filed; and thereby the hasty and erroneous Court Decision and the concomitant questions listed in this Petition would not have had to be raised.

Rule 10 of the Supreme Court Rules states in pertinent part as follows: "Review on a Writ of Certiorari is not a matter of right, but of judicial discretion. A petition for Writ of Certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers: (a) A. United States Court of Appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter, has decided by a state court of last resort; or has so far departed from the accepted and unusual course of judicial proceeding, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power."

Indeed the District Court and the Appeals Court in this instance have departed from the required standards of judicial conduct as to make necessary the exercise of this Court's supervisory powers. Pro se Petitioner mostly in layman terms shall set forth the most egregious acts of judicial misconduct committed against petitioner by the District Court and concurred by the

Appeals Court. The Questions Presented For Review in this petition enumerates and enunciates the major reasons why certiorari should be granted. Therefore, Petitioner shall set forth his argument for certiorari in the same sequence as those Questions Presented For Review.

1. The questions pertaining to the six-year interval between the end of Connor's trial and the rendering of the decision were never answered to by either the District Court or Appeals Court. Connor asserts that the most egregious wrong inflicted upon him during his arduous odyssey through District Court was embodied in the Courts long delayed decision dated April 28, 1999.

The Federal Rules of Civil Procedures states thusly: Rule I. Scope of Rules-these rules govern the procedure in the United States District Courts in all suits of a civil nature whether cognizable as cases at law or in equity or in admiralty, with the exceptions stated in Rule 81. They shall be construed to secure the just, speedy, and inexpensive determination of every action.

It is highly apparent that allowing Connor's case to languish in District Court for eight years before holding a trial and then waiting six-years after the conclusion of the trial to render a decision constitute a serious violation of Rule I. Petitioner implores this Court to grant certiorari based on this violation alone, and thereby answering the question as to what constitutes reasonable and permissible delay.

2. It is highly apparent that the filing of a Judicial Complaint of Misconduct or Disability was the precipitating factor in ending the six-year delay in rendering a decision after the completion of the trial on Connor's case. It is also highly apparent that the District Court's decision was used as an instrument of reprisal against Connor for having filed the Complaint. This is highly inferred by the tone and timing of the Court's ruling.

As mentioned earlier in the Statement Of The Case portion of this Petition, Connor had on three previous occasions attempted to elicit a ruling from the Court. Those attempts were made in February and September 1997. R. 1314-17, and in February 1998. R.1318. The court failed to acknowledge or respond in any way to either of these pleadings. Yet within a month of the filing of the Complaint a Decision was rendered.

In addition to the three written attempts to elicit a Ruling, Connor, and his wife during the six-year period the decision was pending made numerous telephone inquiries to the Court as to the status of his case. On most occasions Court employees told them that the Judge was working on Connor's case. On several occasions they were told that a decision would soon be issued.

Notwithstanding the six-year delay and the indications by Court employees that the Judge was on numerous occasions working very hard on Connor's case, the Decision shows absolutely no evidence that it had been arrived at after being subjected to the required analytic and deliberative process. In fact a comparison between the Court's Findings of Fact and Conclusions of Law. (R.1322) and the Proposed Findings of Fact and Conclusions of Law submitted by the Defendant (R.1275-45) shows the former to be almost an exact replica of the latter.

Given the foregoing facts and circumstances, the inescapable inference is that the District Court had totally ignored Connor's case for six-years and upon being notified that a Complaint had been filed-hastily and vindictively retrieved Defendant's proposed Findings Of Fact and Conclusions of Law and used them as a basis for formulating his ruling against Connor.

Both the District Court and the Appeals Court failed to address the issues contained in Questions Presented For Review No. 2. Surely this court will consider the apparent misconduct indigenous of this question to be so serious as to justify granting certiorari on this question alone.

3. In a Title VII case proceeding; the Presiding Judge is both the trier of fact and law. As trier of fact the credibility of witnesses is a key factor. In credibility determinations behavior traits such as the degree of fugitiveness, eye contact, voice inflection, and body language should be closely observed and carefully evaluated.

Rule 52(a) of the Rules of Civil Procedure states in pertinent part: Findings of Fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." It just is not humanly possible to judge the credibility of each of the twenty or so witnesses that testified during Connor's trial after a six-year interval. The truth of the preceding statement is so apparent as to obviate the need of having to document it with case law or legal precedents. However, Petitioner does remind the Court that in all jury trials the deliberative process starts shortly after the trial ends. The jury is not allowed to go on vacations or have other prolonged absences from the jury duty at hand before reaching a verdict.

It is clear that the intent of Rule 52(a) is to make sure that all evidence is carefully examined and the credibility of all witnesses is determined before findings of fact are arrived at. It is clear that the District Court could not have reached the threshold requirements of Rule 52(a) due to the six-year lapse of time between trial ending and the Decision.

The Fifth Circuit Court has consistently made rulings that stress the importance of adhering to Rule 52(a) in matters relating to pretext, oral and documentary evidence, and credibility of all witnesses. In Reddit v. Mississippi Extended Care Center, Inc. 718 F.2d 181 (1983), the Court ruled in pertinent part as follows:

"(1) District Court's conclusionary findings as to whether black and white employees of nursing home were treated differently was inadequate to support dismissal, particularly in view of substantial record evidence on issue of whether assertedly legitimate nondiscriminatory reasons proffered by employer were, in fact, mere pretext. In Smith v. Texas Dept. Of Water Resources, 99 F.2d 1026 (5th. Cir. 1986). The Court stated as follows: "After trial to the court, judgment was rendered for the Defendants based on written Findings of Fact and Conclusions of Law. Because the findings lack the required specificity to permit effective Appellant Review, we vacate the judgment and remand for further proceedings." Also, Federal Rule of Civil Procedure 52(a) requires the trial court to "find the facts specially." The findings must be explicit enough to allow for Appellant Review." "If the trial court believes the employer's explanation of its motivation, the courts may not merely state, the conclusory terms, that the plaintiff has failed to prove the employer's suggested reason to be a pretext for invidious discrimination or the that there is no evidence of discriminatory treatment. It must at least refer to the evidence tending to prove and disprove the merits of the proffered explanation and state why the court reached the conclusion that the explanation had not been discredited."

Because it deals with testimony and other evidence Rule 63 of Federal Rules of Civil Procedure is also applicable to Petitioner's case and is stated in pertinent part as follows: Rule 63. Inability of a Judge to proceed: In a hearing or trial without a jury, the successor judge shall at the request of a party recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge may also recall any other witness.

The six-year interval between trial ending and decision rendering constitutes substantive evidence that the District Court, either because of disability or misconduct, demonstrated an inability to proceed toward the completion of Connor's case. Such inability is grounds for reversal based on the clearly erroneous criterion.

Although Appellant cannot cite a Rule 63 case that deals specifically with six-year time lapse unique to Connor's case, there are numerous cases that clearly weigh against delays and any other practice inimical to fair and expeditious rendering of all decisions. Some of those cases in summarized form are cited below:

"District Judge, who, after abrupt retirement of trial judge, received sex discrimination case after trial and upon plaintiff's motion to amend findings of fact or for new trial and upon defendant's motion for sanctions against plaintiff and her attorneys, did not abuse his discretion in granting motion for new trial; District Judge was unable to observe parties and their counsel at trial, and noted that findings of fact were inconsistent and trial judge had disclosed conflict of interest." Gaddy v. Abex Corp., C.A. 7(Ill.) 1989, 884 F.2d 312, and "Where testimony of defendant and his witness was sufficient to support finding for defendant, but facts raised a suspicion as to verity of their testimony, and Judge to whom case was referred after death of Judge who heard testimony, and who made finding in favor of defendant did not see witnesses, court of appeals would reverse finding and award a new trial before Judge who could decide after seeing witnesses," Federal Deposit Ins. Corp. v. Sicoco, C.A.N.Y., 1949, 174 Fed. 360, and "where first bankruptcy judge never rendered a decision on fraud count prior to judge's death, primary issues reserved were the defendant's state of mind and the sufficiency the evidence presented to establish that fact and there was no indication as to first judge's evaluation of credibility of certain witnesses and neither party requested second judge to decide the reserved issue, new trial was required. "In re Potter Instrument Co. Inc., Bkrtcy. N.Y. 1981, 15 B.R. 202.

In view of all the foregoing, it is apparent that the issues raised in Petitioner's Question No. 3 in and of themselves justify granting of certiorari by this Court.

4. Case documents and trial testimony contain unrebutted evidence that numerous unwarranted and unduly harsh disciplinary actions were taken against Petitioner after he filed his 1980 Discrimination Complaint. Yet no weight of evidence was given these disciplinary actions as reprisal factors in determining if discrimination had in fact occurred. Hence, the question of whether acts of reprisal taken against an employee who engages in protected activities was left unanswered by both District and Appeals Courts.

Failure to address the reprisal issue by the lower courts constitutes an act that has so far departed from the accepted and usual course of judicial proceedings as stated under Rule No. 10 as to justify the granting of certiorari by this Court.

5. Trial testimony contains numerous instances of Connor's rights under the Privacy Act of 1974 being violated by Postal Service Officials. These violations are corroborated by numerous case documents. Testimony relating to instances of violating Connor's rights under the Privacy Act of 1974 is typified by the trial testimony of Postal Official Primo Marques. Tr. V35-103. The trial testimony of Postal Service Official John Vallie further substantiates Connor's contentions that his privacy rights wee violated. Tr. III 187 thru Tr. IV 40.

The Privacy Act of 1974. Title 5 U.S.C. §552(a)(i)(1) states as follows: Criminal Penalties - Any official or employee of an agency who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is

prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5000.

Inasmuch as the violation of the Privacy Act of 1974 is a criminal offense and inasmuch as this case contains evidence that Postal Service Officials violated Petitioner's privacy and other rights, and inasmuch as the lower Court's failed to take proper cognizance of such violations, it is hoped that this Court will grant certiorari regarding this question.

6. The answer to the question as to whether Postal Service Officials are required to obey its own policies, rules, regulations and the laws and statutes of the United States is so obviously yes as to put petitioner at risk of insulting this Court by asking this question. Yet the District Court and the Appeals Court both failed to answer or even address this question when asked to do so by Petitioner.

The Record shows that throughout its dealings with Connor the Postal Service repeatedly violated its own policies, procedures, rules and regulations as set forth in its E & LR Manual, P-11 Handbook and other Manuals. For example, Postal Service regulations clearly require the mandatory use of PS-Form 2485 whenever a fitness for duty examination is conducted on an employee. Additionally, Federal Rule of Civil Procedure No. 35 required that a Court order be obtained before forcing Connor to undergo examination. Pertinent parts of Rule No. 35 are as follows: (a) Order for Examination: When the mental or physical condition (including he blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit a physical or mental examination

by a physician or to produce for examination the person in the party's custody or legal control. Connor's case was pending in District Court each time he was illegally forced to undergo a fitness for duty examination.

Given the immediate foregoing facts it is imperative that this Court grants Petitioner's request for certiorari regarding this question.

7. The question as to whether District Court committed reversible error when it failed to grant plaintiff the injunctive relief that was requested early on in this case is answered by the following:

Since the commencing of this case on March 13, 1985 until its trial in April 1993 Petitioner filed a total of six complaints (original and five amended). Each complaint contained the following:

1."Grant plaintiff a permanent injunction enjoining defendant, its agents, successors, employees, attorneys and all others acting in concert with defendant or at the direction of defendant from continuing or maintaining any policy, practice, conspiracy, custom or usage of denying, abridging, withholding, conditioning, or otherwise interfering with the right of plaintiff to enjoy equal opportunity in employment, and all other rights to which he is entitled". During the more than fourteen years this case was pending before the Court is totally ignored this plea. By doing so Connor suffered almost incalculable losses and damages to his reputation, career, finances, and even his health.

All the Court had to do was put Postal Service Officials on Notice that abuses perpetrated and propagated against Connor, no matter under what guise or pretext, would not be tolerated by simply issuing an injunction. The District Court's failure to do

so along with the Appeal Court's concurrence constitute grounds for this Court to grant certiorari regarding this issue.

8. In addition to being a Court of Law, District Court is also a Court of Equity. Hence, it had the power to grant equitable relief illustrated as follows: "Equity involves rejection of rigid rules to accomplish what is fair and just in a particular situation. State of Illinois Department, Public Aid v. Heckles, 616 F. Supplement 620, Affirmed 808 F.2d 571 D.C. Ill. 1985".

Throughout the pendency of this case in District Court whenever the issue of equitable relief was raised it was either ignored or rejected. Likewise the Fifth Circuit Court of Appeals refused to grant Connor's Petition For Rehearing, which included that question as one constituting reversible error.

Petitioner believes that the question of a District Court's right to exercise its Court of Equity Powers is of such importance as to grant certiorari based on this question.

9 The Clean-Hands Doctrine is stated thusly: The principle that a party cannot seek equitable relief or assert an equitable defense is that party violated an equitable principle such as good faith. Such a party is described as having "Unclean Hands"- Also termed Unclean Hands Doctrine. Black's Law Dictionary 7th Ed. Evidence submitted to the Court fully apprised it of the Postal Services' dirty-hands. Yet it failed to take the requisite recognizance.

Since it is obvious that had the lower courts adhered to Unclean Hands Doctrine in making credibility and other vital determinations regarding this case, the Final Decisions would have favored Petitioner. Therefore, it is necessary that certiorari be granted so that the questions relating to the Clean Hands Doctrine may be clarified.

10. The District Court's actions and inactions that allowed Postal Service Officials and Agents to suborn and commit perjury during the trying of this case contributed heavily toward the judgment against Connor.

Notwithstanding the multitude of accusations that Postal Service Officials brought against Connor in the interval between his filing his 1980 EEO Complaint and his 1990 Termination, the bottom-line basis for the District Court's sustaining that termination was the testimony of Psychiatrist Dr. Skinner. Tr. Vol. 10, p. 66. That testimony was clearly perjurious. For example his conclusion that Connor had a paranoid personality disorder was based on Dr. Skinner's citing of events that in fact never occurred. Documents substantiating perjury was submitted by Connor to both the District and Appeals Courts. Had the Court taken proper cognizance of that perjurious testimony and other proven instances of perjury and the suborning of perjury then the Rulings in both instances would have inevitably favored Connor. Since the lower courts failed to act properly regarding questions relating to perjury this Court should take the first steps in taking corrective actions by granting certiorari.

CONCLUSION

For all the reasons stated above Petition For Writ Of Certiorari should be granted by this Court.

Respectfully submitted by:

Charlie Connor

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App. 1

IN THE UNITED STATES COURTS OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99 - 10757
Summary Calendar

CHARLES R. CONNOR,

Plaintiff - Appellant,

VERSUS

UNITED STATES POSTAL SERVICE
and
WILLIAM J. HENDERSON,
Postmaster General, United States Postal Service,

Defendants - Appellees.

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CHARLES R. CONNOR,

Plaintiff-Appellant,

VERSUS

WILLIAM J. HENDERSON,
Postmaster General, United States Postal Service,

Defendant - Appellee.

(Filed Feb. 21, 2000)

Appeal from the United States District Court
For the Northern District of Texas
(3:85-CV-517-T)

Before SMITH, BARKSDALE, and
PARKER, Circuit Judge
JERRY E. SMITH, Circuit Judge: *

Charles Connor, a former employee of the United States Postal Service, appeals an adverse judgment following a bench trial of his claims of unlawful employment discrimination and retaliation under title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e-16(c), and the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. Section 633a(c). [1] He also appeals the holding that his claim of discrimination arising in 1980 was untimely. Finding no error, we AFFIRM.

I.

To succeed on a claim of unlawful employment discrimination on the basis of race or age, or of unlawful retaliation for raising such claims, the employee must prove improper motive. Where the employer has offered a lawful explanation, the employee must establish that the asserted justification is pretext that conceals an improper purpose. See *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 510-11 (1993)(title VII); *Bauer v. Albemarle Corp.*, 169 F.3d 962m 966 (5th Cir. 1999) (ADEA)

We review only for clear error a factual conclusion that an employer did not engage in unlawful discrimination. See *Boehms v. Crowell*, 139 F.3d 452, 457 (5th Cir. 1998), *cert. denied*, 525 U.S. 1102 (1999).

"Where the evidence can support findings either way, a choice by the trial judge between two permissible views of the

*Pursuant to 5TH Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH Cir. R.47.5.4.

[1] Connor filed two actions that were consolidated; we treat them as one.

weight of the evidence is not clearly erroneous....A trial court's decision to credit the testimony of one, two, or more witnesses, each of whom has told a coherent, facially-plausible story that is not weight of the evidence is not clearly erroneous....A trial court's decision to credit the testimony of one, two, or more witnesses, each of whom has told a coherent, facially-plausible story that is not contradicted by extrinsic evidence,...can virtually never be clear error." *Theriot v. Parish of Jefferson*, 185 F.3d 477, 490 (5th Cir. 1999*), petition for cert.* filed (Jan. 18, 2000)(No. 99-1203).[2]

II.

Although Connor alleges multiple episodes of unlawful discrimination and retaliation during his final decade of employment, he fails to show clear error in the district court's factual findings. His bare assertion of statistical discrepancy in the number of blacks in management is not enough to mandate a finding of discrimination.[3]

Moreover, Flagg actually recommended Connor for a promotion in November, after Connor's MPD numbers and audit picture began to show improvement. The promotion, the court reasonably found, was denied only because Connor had

[2] Connor received a trial de novo to review the similar conclusion of the Merit Systems Protection Board that the Postal Service did not engage in unlawful employment discrimination. See 5U.S.C. Section 7703(c). Appellate review of the decisions of that board and of the district court thus merge into a single inquiry whether the court made reasonable factual findings on the basis of all the evidence.

[3] *Cf. Walter* v. *Long Star Gas Co.*, 977R.2d 161 (5th Cir. 1992)(noting that "it is the unusual case in which statistics alone can support a finding of intentional discrimination").

failed during the interview to convey knowledge of his own station's productivity or where his station stood with regard to performance goals, and could not articulate what goals he would have for the station to which he was seeking a promotion.[4]

Thus, Connor was unaware of his own productivity numbers and did not know where he stood on his own budget. By contrast, the other candidates were familiar with their stations' status and statistics. Among those receiving promotions include at least two other black supervisors, a fact that alone tends to negate any inference of discriminatory intent.[5]

The court was similarly reasonable in finding that continued problems in Connor's job performance justified his poor evaluation in 1984 and the Postal Service's 1987 and 1989 rulings regarding his requests for backpay. Finally, the testimony of William Skinner, the psychiatrist who examined

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4 For example, Flagg noted that Connor's minutes-per-delivery performance was too high.

5 See Singh v. Shoney's Inc., 64F.3d 217, 219 (5th Cir. 1995)("Singh [a white female] failed to make out a prima facie case of racial discrimination on this record, because she was replaced by a white female."); Nieto v. L&H Packing Co., 108F.3d 621, 624 (5th Cir. 1997)("While not outcome determinative, this fact[that a Hispanic employee is succeeded by another Hispanic] is certainly material to the question of discriminatory intent.").

Connor February 1990, supports the finding that the Postal Service had deemed Connor no longer medically able to perform his duties, and discharged him for that reason.[6]

The rebuttal testimony of Dr. Judy Cook was insufficient to preclude a reasonable fact-finder from crediting Skinner's diagnosis.[7]

Having reasonably reached these numerous factual conclusions, the court did not commit clear error in holding that Connor's inability to do the job, rather than race or age, motivated the adverse employment actions. The judgment is AFFIRMED.

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[6] Specifically, Skinner diagnosed Connor with a paranoid personality disorder and concluded that Connor was very sensitive, hadextreme distrust, read hidden meanings into straightforward, communications, and used inflammatory phrases, such as the "Four Horseman of the Apocalypse," when explaining his perception that there was a conspiracy to harm him. The court was entitled not only to give credence to the diagnosis that Connor was unfit for duty, but also to discredit Connor's testimony accordingly.

[7] We need not pass judgment on the merits of the Postal Service Service's ability determination, for "our inquiry is not into the merits of the employer's employment decisions but into the motives." Wilson v. Belmont Homes, Inc/. 970 F.2d 53, 57 (5th Cir. 1992).

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-10775

CHARLES R. CONNOR
Plaintiff – Appellant,

v.

UNITED STATES POSTAL SERVICE;
WILLIAM J. HENDERSON, Postmaster General, United States Postal Service.
Defendant – Appellees.

CHARLES R. CONNOR
Plaintiff – Appellant,

v.

WILLIAM J. HENDERSON, Postmaster General, United States
Defendant – Appellee

Appeal from the United States District Court for the
Northern District of Texas, Dallas

(Filed May 9, 2000)

ON PETITION FOR REHEARING

Before SMITH BARKSDATE,
and PARKER, Circuit Judges. PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED. ENTERED FOR THE COURT.

\S\United States Circuit Judges.

App.7

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CHARLES R. CONNOR,
Plaintiff,

v.

WILLIAM HENDERSON, POSTMASTER GENERAL
UNITED STATES POSTAL SERVICE,
Defendant.

COURT'S FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This action having come before the Court in a bench trial, the Court having heard and considered the witnesses and having examined the exhibits enters these findings of fact and conclusions of law.

Finding of Fact

1. Plaintiffs Charles R. Connor is a black male and was an Employee of the United States Postal Service at the Dallas Post Office during all periods relevant to this claim. At the time of his removal from the Unites States Postal Service, he was more than 40 years old. At all times relevant to this matter, Connor has resided in Dallas, Texas.

2. Connor began work with the Postal Service in July 1960, as a substitute letter carrier and became a regular carrier in June 1967. In November 1973, he was promoted to a level 15 initial level supervisory positions, Route Examiner. In March 1974, he was reassigned to level 15 supervisory positions, Foreman, Delivery,

and Collection. In October 1975, he was promoted to a level 16 Superintendent of Station and Branch Operations at the Industrial Postal Station. In December 1976, he was reassigned as a level 16 Manager, Station and Branch Operations, at the East Oak Cliff Station. In February 1977, he was reassigned as a level 16 Manager, Station and Branch Operations, at the Highland Hills Station. In March 1981, he was reassigned as a level 16 Superintendent, Station and Branch Operations, at the Beverly Hills Station. was reassigned subsequently to the Farmers Branch Station, as the Superintendent, and this was the position he held at the time of his initial removal in July 1987.

3. Beginning in February 1977, Connor was the Station Manager at the Highland Hills Station. This was one of the smallest stations in Dallas as most stations were level 18 stations. In 1978, Connor began reporting to Charles Flagg, Area Manager, who was responsible for 16 of the stations in Dallas, including Highland Hills. Glenn Smith was the other Area Manager and he was responsible for the other 15 Dallas stations. Flagg had previously supervised Connor as a letter carrier at the South Oak Cliff Station.

4. Flagg determined that Connor's station was not performing productively, was not adequately supervising check cashing Policies, and was having problems with financial audits. In speaking with Connor, he found that Connor needed help with the financial audits because he did not have sufficient expertise. Accordingly, Flagg sent a postal examiner to assist Connor in this regard.

5. Flagg discussed with Connor the fact that his Minutes Per Delivery (MPD) performance at the station was too high. Minutes Per Delivery was the basic measure of productivity used in the stations at the time and served to compare stations with earlier performance based on the circumstances at that station.

6. During 1979, Connor's performance began to improve in the MPD and finance area.

7. Flagg's three evaluations of Connor during 1979 on various promotion applications reflected Connor's problems and his progress. Flagg's did not believe that Connor was ready to take on a larger station with its increased responsibility and, therefore, did not recommend Connor for promotion to a level 18 station in either July or September. However, he did recommend Connor for promotion in November 1979, after Connor's MPD numbers and audit picture began to improve.

8. Connor was not recommended for promotion by review panels in July and September 1979. However, Connor was recommended by a panel in a November 1979 promotion package, and therefore, was interviewed by Flagg and Glenn Smith, the Area Managers who were to make the selections for level 18 managers. Two level 18-station manager positions were open.

9. Although Connor's application showed experience in managing a small station, Flagg, was aware of Connor's performance difficulties and his improvement. During the interview conducted with all candidates, Connor failed to show that he knew about his won station's MPD performance, or where his station stood with regard to performance goals, or what goals he had for the station he would be promoted to. He was unaware of his productivity numbers and did not know where he stood on his budget. The other candidates were familiar with their stations' MPD status and goals. At the interview, in explanation for his lack of knowledge, Connor stated, "If I would have known you were going to ask those questions, I would have studied up on it."

10. Flagg and Smith picked the persons they thought were most qualified and did not give significant weight to an applicant's seniority.

11. Flagg worked with and helped develop several other black supervisors who were promoted to the position of Area manager. Arthur Young and Nathaneal Harris.

12. Connor appealed the decision to the Regional EEO Office alleging race discrimination. On October 15, 1982, after a full hearing, the Attorney Examiner denied Connor' complaint, finding no discrimination. Connor appealed to the Office of Review and Appeals of the EEOC. The Office of Review and Appeals affirmed the finding of not discrimination in the promotion decisions of Flagg and Smith. Although the Office of Review and Appeals issued its decision in October 1985, Connor failed to include this claim in this action for many months beyond the 30-day period for appealing to district court. The court finds that Connor failed include this claim in this action for many months beyond the 30-day period for appealing to district Court . The court finds that Connor, represented by counsel at the time, failed to timely amend his complaint to include these claims and has failed to offer any explanation for that failure simply except neglect.

13. Based primarily on Connor's interview, Flagg and Smith did not select Connor for the level 18 position. Connor failed to offer any credible evidence to rebut the explanations to Smith and Flagg other than his subjective conclusion that he was discriminated against and the fact that the two men who were ultimately chosen were white.

14. The promotion decisions made by Flagg and Smith were made for legitimate reasons and were not motivated by any intent to discriminate against Connor because of his race.

15. In March 1981, after serving in the Highland Hills Station as the Manager, Connor was reassigned as a Superintendent, reporting to the Station Manager, at the Beverly Hills Station. In 1983, he was assigned to the Farmers Branch Station as Superintendent.

16. In late 1983, Gerald Townsend was assigned to the Farmers Branch Station as the Station Manager in an effort to correct problems relating to, among other things, a backlog of mail volume, station uncleaniness, bad employee attitudes, and accrual of excessive overtime.

17. Connor reported directly to Townsend. Townsend observed problems in Connor's as second in command at the station. Connor was not getting mail delivered, not training subordinates, and not keeping up with the goals of the station. Tasks given him were not completed in a timely manner.

18. On or about June 7, 1984 Charles R. Connor received a letter of warning from Townsend charging him with failure to maintain overtime at a minimal amount and with failing to obtain Townsend's approval for overtime.

19. On June 20, 1984, Connor appealed his letter of warning through the internal non-bargaining grievance process in the Postal Service under Section 650 of the Employee and Labor Relations Manual (ELM). Connor's grievance was denied.

20. Connor then appealed to the next level in the Section 650 process. Connor's grievance regarding the letter of warning was denied at this level as well.

21. Connor received an annual merit performance evaluation by Townsend on or about June 21, 1984, which rated him as "marginal". Townsend cited problems in Connor's supervision of the supervisors under him as well as his lack of productivity.

22. In October 1984, Connor applied for promotion on job number 84-27, a level 17 Superintendent, Station/Branch Operations position, and job number 84-29, a level 17 Superintendent, Station/Branch Operations. Townsend did not recommend him for those positions, citing his supervision, productivity, and discipline problems. Don Young, Acting Area Manager, concurred those non-recommendations.

23. Connor filed EEOC complaints as to both the non-recommendations and the marginal rating.

24. In January 1986, after a full hearing, the Attorney Examiner for the EEOC found no discrimination and no reprisal in Townsend's 1984 marginal rating of Connor nor in Townsend's non-recommendation for promotion of Connor. In August 1984, the Office of Review and Appeals of the EEOC agreed, and Connor appealed to this court.

25. The court finds that Townsend's explanations for his assessment of Connor's performance are credible and they were corroborated by the testimony of other supervisors from Farmers Branch who worked with Connor. Further, the Court finds no credible evidence to support Connor's allegation that Connor's race, age, or a reprisal for an EEOC complaint Connor filed four years earlier motivated Townsend's action.

26. In the latter part of 1984, Connor and Townsend were transferred to the Beverly Hills Station. In December 1984, it was proposed to reduce Connor from a supervisor to a letter carrier because of a serious non-delivery of mail problem in the

Farmer Branch Station. This action was ultimately rescinded for procedural error through the grievance process.

27. In July 1985, Connor was issued a notice of disciplinary action proposing to suspend him for seven days for failure to fully cooperate in the investigation of an unauthorized reproduction and mailing on postal premises of a leaflet containing Connor's name and soliciting votes for him in a National Association of Postal Supervisors (NAPS) election. A letter of decision affirming this action was issued on August 9, 1985. Connor appealed the suspension through the non-bargaining grievance procedure.

28. After a hearing, the suspension was reversed by Larry Stebbins, a regional postal official, on May 27, 1986, for lack of evidence. The decision instructed local officials to compensate Connor for any losses and to remove any record of the suspension from his files. The Postal Service compensated Connor with straight time pay for the suspension period based on the policy in effect at the time restricting the use of overtime by supervisors and based on postal regulations that based backpay on an assessment of what a similarly situated employee would have been paid. Connor failed to offer any evidence to rebut the applicability of these regulations or to present any credible evidence that race, age, or reprisal accounted for the nonpayment of overtime or night differential pay.

29. In early 1985, Michael Walder replaced Townsend as the Station Manager of the Beverly Hills Station.

30. Walder tried to help Connor in improving his skills as a Superintendent. Despite Walder's efforts, Connor consistently failed at Farmers Branch to take the initiative to supervise the level 15 supervisors and failed to carry out his responsibilities. Walder discussed these problems with Connor, but to no avail.

31. In early May 1986, Walter met with Connor to discuss his merit evaluation. Walder proposed to give Connor a "marginal" rating as to his abilities but invited Connor's comments as to what Connor believed is performance was. During the course of this discussion, Connor, became upset and left the office. A few minutes later, Connor submitted a leave slip to Walder stating that he was "incapacitated" to work and requesting leave. Walder granted the request. The next day Connor telephoned Walder and said that he was not coming in to work but refused to provide a reason.

32. While the referral to a psychiatrist was pending, Connor's removal was proposed by Walder based on an incident of AWOL (appearing at a NAPS convention while on sick leave) and a customer complaint concerning Connor's rude behavior just before his merit evaluation on May 7. The removal was ultimately held in abeyance because of the pending psychiatric examination.

33. Connor was examined by a psychiatrist, Dr. William Waltrip in August 1985. Waltrip determined that Connor was unfit for duty based on his diagnosis that Connor suffered from a paranoid personality disorde and reactive depression.

34. After a delay of several months because of an administrative transition in the Postal Service, the Human Resources Personnel, including Primo Marquez, who had recently returned to Dallas and who had no prior knowledge of Connor's problems, repeatedly contacted Connor and his wife to resolve his employment status and offer the possibility of disability retirement. The Postal Service needed to resolve the situation because Connor's job remained open and could not be filled. Connor declined to provide any contrary medical documentation, refused to consider disability retirement, and indicated he would

not participate in an effort to impose management-initiated disability retirement. In essence, Connor declined any option other than removal based on his ability to perform his position.

35. Effective July 31, 1987 Connor was removed from his position as Superintendent, Station Operations, Farmers Branch Station, for inability to perform the duties of his position.

36. The July 15, 1987 letter of decision from the Director of City Operations, Ben Jasek, regarding Connor removal informed Connor of his right to appeal the decision to either the Merit Systems Protection Board (MSPB) or through the agency internal appeal procedures under Part 650 of the Employee and Labor Relations Manual (ELM).

37. By letter of July 27, 1987, Connor chose the internal agency appeal process. After a full evidentiary hearing, Larry Stebbins issued his decision at Step I of the internal appeals process. This decision essentially set aside the removal and returned Connor to work on the condition that he pass a new psychiatric fitness-for-duty exam. At this time, the first fitness-for duty report was year and a half old. According to the decision, if Connor failed the new exam, he could initiate disability retirement or the agency would do so. Connor appealed that decision to Step II on May 26, 1988, sating that he wanted either to be removed or, put back to work without any further examination by medical personnel.

38. A decision was issued at Step II on March 28, 1989, rescinding the removal for a procedural error, namely, a failure to notify Connor within 30 days of the Postal Service's intention to remove him before issuing the letter of decision on the removal. The decision did not address the merits of the removal.

39. On April 13, 1989, a letter was sent to Connor from the Acting Field Director, Human Resources, Dallas Division (Primo Marquez), informing Connor of the effect of the Step ii decision and offering Connor the opportunity to submit any information that he had which was inconsistent with that in the possession of the Postal Service to enable the Postal Service to comply with the Step II decision, including backpay in accordance with the Postal Service's regulations. Connor declined to offer any such documentation and continued to deny that he had any psychiatric problem.

40. By letter of August 21, 1989, Connor was informed that backpay for the period following the July 1987 removal until the reversal of that removal on procedural grounds in March 1989 would be denied because the medical information the Postal Service retained on file regarding Connor's condition indicated that he was not ready, willing, and able to work, and Connor failed to supply medical documentation to indicate otherwise. Connor appealed repeatedly to the MSPB alleging discrimination in the Postal Service's determination not to pay him backpay after the rescission of his original 1987 removal in March 1989, and alleging constructive suspension in that he was being carried without pay when he refused to appear for fitness-for-duty-examinations through 1989. The MSPB declined to accept jurisdiction over these allegations findings that the Postal Service had the right t send him to such an examination and to carry him without pay if he refused.

41. The MSPB did not find that the Postal Service had caused Connor to involuntarily retire in February 1989 because of any error in its retirement counseling of him. The Board found no evidence of discrimination in this regard, and subsequently found that the Postal Service had fully complied with the Board's order to reactive Connor retroactive to February 1989.

42. Based on the facts found above, the Court finds that the Postal Service had a legitimate, nondiscriminatory reason for declining to approve backpay for Connor for the period from 1987 through 1989 when his removal was rescinded for procedural error, and Connor had failed to provide any credible evidence to support that such reason was a pretext for race, age, or reprisal discrimination.

43. Additionally, by a letter of August 21, 1989, Connor was advised that he would shortly be sent for another psychiatric evaluation to determine whether he was currently fit for duty. He was informed that he would continue to be carried in an administrative leave status until after the results of the fitness-for-duty examination were received.

44. Connor failed to appear for two psychiatric fitness-for-duty examinations scheduled for September 13 and October 12, 1989, respectively. Connor was removed from administrative leave and requested by letter to contact the Director of Human Resources, Primo Marquez, to discuss retirement and his employment status. Connor continued to contend during this period that the Postal Service had no right to require him to do for the psychiatric exam despite postal regulations to the contrary. As noted above, in response to appeals by Connor on this issue, alleging that the Postal Service had discriminatory suspended him by placing him on leave without pay, the Merit Systems Protection Board confirmed that the Postal Service had the right to send him for such an examination and to carry him without pay if he refused.

45. After Connor again declined to pursue retirement options, the Postal Service offered him a final opportunity to appear for a fitness-for-duty examination on February 5, 1990. Connor appeared for the examination, and the psychiatrist, Dr. William Skinner, reported his findings to the Postal Service by letter of February 5, 1990, the same day as the evaluation.

46. On March 8, 1990, Connor and his wife met with Primo Marquez, Director of Human Resources, as well as Ted Faulkner, the Manager of Employment and Placement, to discuss Dr. Skinner's report and Connor's employment status. During this meeting, Marquez told Connor that, at that time, he could not be returned to work, based on Dr. Skinner's evaluation. When the subject of retirement was raised, Connor declined to consider voluntary retirement, for which he was eligible. Marquez told Connor that because Dr. Skinner had recommended medical treatment, he would consider any other medical documentation from Connor if he chose to seek treatment. He further told Connor that he could request sick or annual leave to cover his absences for the time from the examination forward. Finally, he stated that he would wait before making a final decision but the Connor's position would not be held open indefinitely.

47. By letter of March 22, 1990, Primo Marquez confirmed the meeting held on March 8 and gave Connor until April 20 to exercise his options. Connor did not request leave, nor did he respond at all to the options proposed by Marquez and Faulker.

48. When no action was taken by Connor, on May 4, 1990, the Postal Service proposed Connor's removal for inability to perform his position and AWOL. Connor provided his written response on May 18, 1990.

49. On June 18, 1990, Marquez issued his decision approving the removal effective June 22. 1990. and informing Connor of his appeals rights.

50. Connor appealed his removal to the MSPB and included allegations of discrimination based ona race, age, and reprisal.

51. After a full evidentiary hearing, the MSPB sustained the agency's action and found no evidence of discrimination in a

detailed decision of October 23, 1990. Connor appealed directly to this court by seeking to amend his earlier district court complaint. Ultimately, these claims, were accepted into this action by the Court's Order of December 11, 1991.

52. Connor was removed from the official roles of the Postal Service effective November 27, 1990, in accordance with its regulations, after the MSPB's affirmance of his removal became final. As a result, and in accord with Postal and Office of Personnel Management regulations, he was referred to the Office of Personnel Management for retirement counseling. Connor filed several EEOC complaints alleging race, age, and reprisal discrimination in this action, and all such complaints were rejected as being included in his removal appeal to the MSPB, or in this action.

53. The Court finds that the Postal Service had legitimate, nondiscriminatory reasons for the removal action it took in June, 1990. Despite a number of procedural errors, the Postal Service had reliable documentation supporting a determination of Connor's psychiatric inability to perform his duties. Connor declined to respond with any controverting professional opinion. The evidence demonstrates, in fact, that Connor, from at least May 1986, determined that there was a conspiracy against him and declined thereafter to respond meaningfully to any agency requests regarding his employment. The court finds that Connor had not produced any credible of a conspiracy of race, age, or reprisal discrimination, nor has he produced any support for his contention that the psychiatric examinations were insufficient or "trumpted up". Rather, Dr. Skinner credibly testified that Dr. Cook's evaluation of Connor, which the Court finds was not provided to the Postal Service a the time in question, was inadequate and did not address the diagnosis reported in Skinner's February 5, 1990 letter.

54. The Court further finds that the MSPB's determination in this matter that the removal from service was proper and in the interests of the efficiency of the Service was amply supported by a detailed record.

55. Further, the Court finds that Connor's retirement was properly processed by the Office of Personnel Management, as evidenced by the fact that he is currently receiving an annuity and lost no annuity from the date of his filing for retirement n November 1990.

56. The Court further finds no credible basis for Connor's allegations of discrimination in the handling of his retirement has he had offered no evidence to rebut the regulations supporting the Postal Service actions in removing from the rolls and referring him to the Office of Personnel Management. In any event, Connor's claims are moot as he has not demonstrated any loss which is remediable under Title VII resulting from this transaction.

Conclusions of Law

It is well established that Title VII actions by federal employees must be brought to district court within prescribed limitation periods. Specifically, Connor was required to file his claim regarding non-promotion in 1979-1980 in this court within 30 days after any final decision by the Office of Review and Appeals of the EEOC, 29 C.F.R. 16.3.281© Connor failed to do so, and this claim must be dismissed. *Irwin v. Veterans Administration*, 11 S. Ct.453, 457-458 (1990). (Tolling not granted for late filings due to lack of diligence in Title VII matters). The evidentially standards for Title VII cases are articulated in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248 (1981), and the decisions of the Fifth Circuit. *Valdez v. San*

Antonio Chamber of Commerce, 974 F.2d 1160 (5th Cir. 1991); *Turner v. North American Rubber*, 979 F.2d 55 (5th Cir. 1992). In both Title VII and age cases, the plaintiff must prove a prima facie case, the employer must than articulate a legitimate, nondiscriminatory reason for its action, and finally, the plaintiff must prove that the proffered reason is unworthy of credence or more likely motivated by discrimination. Ultimately, the plaintiff has the burden of proving international discrimination. *Valdez v. San Antonio Chamber of Commerce*, 974 F.2d at 596.

The court's inquiry is "not into the merits of the employer's employment decisions but into the motives". Wilson v. Belmont Homes, 970 F.2d 53, 57 (1992). Neither Title VII nor theAge Discrimination in Employment Act(ADEA) intended to transform the courts into personnel managers or to create a vehicle for judicial second guessing of business decisions. Waggoner v. City of Garland, Texas, 1993 WL 81530, page 5 (5th Cir. April 8, 1993), citing *Thornbrough v. Columbus and Greenville Railroad Co.*,760 F.2d 633 (5th Cir. 1985) Nor do gross statistics support a finding of intentional discriminatin without more. *Walther v. Lone Star Gas*, 977 F.2d 161, 162 (5th Cir. 1992).

In reviewing appeals of mixed case claims form the Merit Systems Protection Board (MSPB), the court's review of the discrimination claims is de novo. *Maulding v. Sullivan, 961* F.2d 694 (5th Cir. 1992). However, the MSPB's determination of nondiscrimination issues is reviewed deferentially, namely, as to whether substantial evidence in the administrative record supports the MSPB's decision. *Id.*

Regarding claims of reprisal, it is well established that a plaintiff must demonstrate that he engaged in protected activity, that an adverse employment action occurred, and that there is a

causal connection between the two. *Shirley v. Chrysler First*, 970 F.2d 39, 42 (5th Cir. 1992); *Jones v. Flagship Int'l.*, 793 F.2d 714 (5th Cir. 1986)

In light of the foregoing findings of fact and legal principles, the court concludes that:

1. This court has jurisdiction over this action pursuant to 42U.S.C. Section 2000e-16©, 29 U.S.C. Section 633a and 5 U.S.C. Section 703(a)(2).

2. Connor's claim of race discrimination in his non-promotion to two level 18 positions in 1980 should be dismissed as untimely filed. *Irwin v. Veterans Administration*, 11 S. Ct. at 457-458. In any event, the Postal Service did not intentionally discriminate against Connor on the basis of his race, or his age or in reprisal in not selecting him for those positions.

3. Connor's claim of race, age, and reprisal discrimination in his marginal rating in 1984 is moot as no remedy is available under Title VII. Moreover, the Postal Service did not intentionally discriminate against Connor on the basis of his race or age, or in reprisal in rating him marginal, in not recommending him for promotion, or in not selecting him for promotion in 1874.

4. The postal service did not intentionally discriminate against Connor on the basis of race, age, or in reprisal when it compensated him only for straight time after the rescission of his seven-day suspension in 1985.

5. The postal service did not intentionally discriminate against Connor on the basis of race, age, or in reprisal when it compensated him without backpay after the rescission of his July 1987 removal.

6. The postal service did not intentionally discriminate against Connor on the basis of race, age, or in reprisal in its removal of him in June 1990 removal is amply supported by substantial evidence in the administrative record.

7. The MSPB affirmance of the June 1990 removal is amply supported by substantial evidence in the administrative record.

Based on the foregoing finds of fact and conclusions of law, the Court will enter final judgment of Defendant United States Postal Service in all things.

Signed: April 28, 1999.

/s/ Robert B. Maloney

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

****

CHARLES R. CONNOR,
Plaintiff,

v.

WILLIAM HENDERSON, POSTMASTER GENERAL,
UNITED STATES POSTAL SERVICE,
Defendant.
(Filed Apr. 28, 1999)

FINAL JUDGEMENT

The action came on before the Court on a bench trial, Honorable Robert B. Maloney, presiding, and the issues having been duly considered and a decision having been rendered,

It is ORDERED and ADJUDGED that Plaintiff Charles R. Connor's claims of race discrimination, age discrimination, and reprisal against Defendant William Henderson, Postmaster General, United States Postal Service, are dismissed with prejudice.

It is FURTHER ORDERED and ADJUDGED that all relief not specifically granted herein is DENIED.

Signed this 28 day of April 1999.

/s/ Robert B. Maloney